

§ 301.7430-3

26 CFR Ch. I (4-1-09 Edition)

A must file a claim with the Tax Court as prescribed under the Tax Court's Rules of Practice and Procedure.

[T.D. 8542, 59 FR 29360, June 7, 1994, as amended by T.D. 8725, 62 FR 39118, July 22, 1997; T.D. 9050, 68 FR 14320, Mar. 25, 2003]

§ 301.7430-3 Administrative proceeding and administrative proceeding date.

(a) *Administrative proceeding.* For purposes of section 7430, an administrative proceeding generally means any procedure or other action before the Internal Revenue Service that is commenced after November 10, 1988. However, an administrative proceeding does not include—

(1) Proceedings involving matters of general application, including hearings on regulations, comments on forms, or proceedings involving revenue rulings or revenue procedures;

(2) Proceedings involving requests for private letter rulings or similar determinations;

(3) Proceedings involving technical advice memoranda, except those submitted after the administrative proceeding date (as defined in paragraph (c) of this section); and

(4) Proceedings in connection with collection actions (as defined in paragraph (b) of this section), including proceedings under section 7432 or 7433, except proceedings brought under section 7433(e) and § 301.7433-2 or proceedings otherwise described in § 301.7430-8(c). See § 301.7430-8.

(b) *Collection action.* A collection action generally includes any action taken by the Internal Revenue Service to collect a tax (or any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax) or any action taken by a taxpayer in response to the Internal Revenue Service's act or failure to act in connection with the collection of a tax (including any interest, additional amount, addition to tax, or penalty, together with any costs in addition to the tax). For example, a collection action for purposes of section 7430 and this section includes any action taken by the Internal Revenue Service under chapter 64 of subtitle F to collect a tax. Collection actions also include those actions taken by a taxpayer to remedy the Internal Revenue Service's failure

to release a lien under section 6325 and to remedy any unauthorized collection action as defined by section 7433, except those collection actions described by section 7433(e). However, an action or procedure directly relating to a claim for refund filed with the Service Center's Collection Branch or District Director's Collection Division after payment of an assessed tax is not a collection action.

(c) *Administrative proceeding date.*—(1) *General rule.* For purposes of section 7430 and the regulations thereunder, the term administrative proceeding date means the earlier of—

(i) The date of the receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals; or

(ii) The date of the notice of deficiency.

(2) *Notice of the decision of the Internal Revenue Service Office of Appeals.* For purposes of section 7430 and the regulations thereunder, a notice of the decision of the Internal Revenue Service Office of Appeals is the final written document, mailed or delivered to the taxpayer, that is signed by an individual in the Office of Appeals who has been delegated the authority to settle the dispute on behalf of the Commissioner, and states or indicates that the notice is the final determination of the entire case. A notice of claim disallowance issued by the Office of Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals. Solely for purposes of determining the administrative proceeding date, a notice of deficiency issued by the Office of Appeals is not a notice of the decision of the Internal Revenue Service Office of Appeals.

(3) *Notice of deficiency.* A notice of deficiency is a notice described in section 6212(a), including a notice rescinded pursuant to section 6212(d). For purposes of determining reasonable administrative costs under section 7430 and the regulations thereunder, a notice of final partnership administrative adjustment described in section 6223(a)(2) will be treated as a notice of deficiency. A notice of final S corporation

administrative adjustment issued pursuant to section 6223(a)(2) as made applicable to subchapter S items by section 6244 will also be treated as a notice of deficiency.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Taxpayer A receives a notice of proposed deficiency (30-day letter). A files a request for and is granted an Appeals office conference. At the conference, an agreement is reached on the tax matters at issue. A cannot recover any costs because they were not incurred on or after the administrative proceeding date, which is the earlier of the date of receipt by the taxpayer of the notice of the decision of the Internal Revenue Service Office of Appeals, or the date of the notice of deficiency.

Example 2. Taxpayer B receives a notice of proposed deficiency (30-day letter). B pays the amount of the proposed deficiency and files a claim for refund. B's claim is disallowed and a notice of proposed disallowance is issued by the District Director. B does not request an Appeals office conference and the District Director issues a notice of claim disallowance. B then files suit in a United States District Court. B cannot recover reasonable administrative costs because, although the District Director issued a notice of claim disallowance, the Internal Revenue Service did not issue either a notice of decision of the Internal Revenue Service Office of Appeals or a notice of deficiency.

Example 3. Assume the same facts as in *Example 2*, except that after B files a claim for refund and receives the notice of proposed disallowance, B requests and is granted Appeals office consideration. No agreement is reached with Appeals and the Office of Appeals issues a notice of claim disallowance. B does not file suit in District Court but instead contacts the Appeals office to attempt to reverse the decision. B convinces the Appeals officer that the notice of claim disallowance is in error. The Appeals officer then abates the assessment. Because a notice of claim disallowance issued by Appeals is a notice of the decision of the Internal Revenue Service Office of Appeals, B may recover reasonable administrative costs incurred on or after the receipt of the notice of claim disallowance (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied. B cannot recover the costs incurred prior to receipt of the notice of claim disallowance because they were incurred before the administrative proceeding date.

Example 4. Taxpayer C receives a notice of proposed deficiency (30-day letter). C files a request for and is granted an Appeals office

conference. At the Appeals conference no agreement is reached on the tax matters at issue. The Office of Appeals then issues a notice of deficiency. Upon receiving the notice of deficiency C does not file a petition with the Tax Court. Instead, C pays the deficiency and files a claim for refund. The claim for refund is considered by the Internal Revenue Service and the District Director issues a notice of proposed disallowance. C requests and is granted Appeals office consideration. C convinces Appeals that C's claim is correct and Appeals allows C's claim. C may recover reasonable administrative costs incurred on or after the date of the notice of deficiency (the administrative proceeding date), but only if the other requirements of section 7430 and the regulations thereunder are satisfied.

Example 5. Taxpayer D receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (Trust Fund Recovery Penalty) pursuant to section 6672. D requests and is granted Appeals office consideration. Upon consideration, Appeals upholds D's position. D cannot recover reasonable administrative costs because the costs were not incurred on or after the administrative proceeding date.

Example 6. Taxpayer E files an individual income tax return showing a balance due. No payment is made with the return and the Internal Revenue Service assesses the amount shown on the return. The Internal Revenue Service issues a notice and demand for tax pursuant to section 6303. E contacts the Collection Division (Collection) regarding E's outstanding liability. No agreement is reached with respect to the timing of E's payment, and Collection issues a notice of intent to levy pursuant to section 6331(d). Prior to the levy, E enters into an installment agreement with Collection. The costs that E incurred in connection with the notice and demand were not incurred in an administrative proceeding, but rather in a collection action. Accordingly, E may not recover those costs as reasonable administrative costs under section 7430 and the regulations thereunder.

Example 7. Taxpayer F receives a District Director's Collection Division (Collection) proposed assessment of trust fund taxes (Trust Fund Recovery Penalty) pursuant to section 6672. F requests and is granted Appeals office consideration. Appeals considers the issues and decides to uphold Collection's recommended assessment. Appeals notifies F of this decision in writing. Collection then assesses the tax. Pursuant to section 6672(b), within 30 days after the notice and demand is made, F pays the minimum amount required to commence a court proceeding, files a claim for refund, and furnishes the required bond. Collection then considers and disallows the claim. Appeals then reconsiders the claim and reverses its original position, thus upholding F's position. Appeals then abates

the assessment. F may recover reasonable administrative costs incurred after the receipt of the original decision of Appeals (the administrative proceeding date) that Appeals was upholding Collection's recommended assessment, but only if the other requirements of section 7430 and the regulations thereunder are satisfied. F cannot recover costs that are attributable to any procedure or other action before Collection prior to filing F's administrative claim for refund.

[T.D. 8542, 59 FR 29362, June 7, 1994, as amended by T.D. 9050, 68 FR 14320, Mar. 25, 2003]

§ 301.7430-4 Reasonable administrative costs.

(a) *In general.* For purposes of section 7430 and the regulations thereunder, reasonable administrative costs are any costs described in paragraph (b) of this section that are incurred in connection with an administrative proceeding (as defined in § 301.7430-3(a)) and incurred on or after the administrative proceeding date (as defined in § 301.7430-3(c)).

(b) *Costs described—*(1) *In general.* The costs described in this paragraph are the reasonable and necessary amount of costs incurred by the taxpayer to present the taxpayer's position with respect to the merits of the tax controversy or the recovery of reasonable administrative costs. These costs include—

(i) Any administrative fees or similar charges imposed by the Internal Revenue Service;

(ii) Reasonable expenses of expert witnesses;

(iii) Reasonable costs of any study, analysis, engineering report, test or project that is necessary for, and incurred in preparation of, the taxpayer's case; and

(iv) Reasonable fees paid or incurred for the services of a representative (as defined in paragraph (b)(2) of this section) in connection with the administrative proceeding.

(2) *Representative and specially qualified representative—*(i) *Representative.* A representative is a person compensated for services rendered in connection with the administrative proceeding, who is authorized to practice before the Internal Revenue Service or the Tax Court.

(ii) *Specially qualified representative.* For purposes of paragraphs (b)(3)(iii) and (c)(2)(ii) of this section, a specially qualified representative is a representative (as defined in paragraph (b)(2)(i) of this section) possessing a distinctive knowledge or a unique and specialized skill that is necessary to adequately represent the taxpayer in the proceeding. Examples of a unique and specialized skill or distinctive knowledge would be an identifiable practice specialty such as patent law or knowledge of a foreign law or language where such specialty or knowledge is necessary to adequately represent the taxpayer in the proceeding. For purposes of this paragraph, neither knowledge of tax law nor experience in representing taxpayers before the Internal Revenue Service is considered distinctive knowledge or a unique and specialized skill. An extraordinary level of general representational knowledge and ability that is useful in all proceedings is not considered, in and of itself, distinctive knowledge or a unique and specialized skill. Specially qualified representatives also do not include those who have a distinctive knowledge of the underlying subject matter of the controversy in circumstances where such distinctive knowledge could reasonably be supplied through the use of an expert, or could readily be obtained through literature pertaining to the subject.

(3) *Limitation on fees for a representative—*(i) *In general.* Except as otherwise provided in this section, fees described in paragraph (b)(1)(iv) of this section that are recoverable under section 7430 and the regulations thereunder as reasonable administrative costs may not exceed, in the case of proceedings commenced after July 30, 1996, \$110 per hour increased by a cost of living adjustment (and if appropriate, a special factor adjustment).

(ii) *Cost of living adjustment.* The Internal Revenue Service will make a cost of living adjustment to the \$110 per hour limitation for fees incurred in any calendar year beginning after December 31, 1996. The cost of living adjustment will be an amount equal to \$110 multiplied by the cost of living adjustment determined under section